

5/17/89

SB 843  
Uribe (Wolens)  
(CSSB 843 by Uher)

SUBJECT: Definition of barratry, new penalties

COMMITTEE: Judicial Affairs: committee substitute recommended

VOTE: 5 ayes--P. Hill, C. Harris, F. Hill, McCollough, Uher  
0 nays  
4 absent--Parker, G. Luna, Rangel, Smithee

SENATE VOTE: On final passage, April 20 -- voice vote

WITNESSES: For--Broadus Spivey, Texas Trial Lawyers Association  
Against--None

BACKGROUND: Barratry, or inciting litigation for economic gain, is a Class A misdemeanor (maximum penalty \$2,000 and 180 days in jail), when it meets the definition in sec. 38.12 of the Penal Code.

DIGEST: CSSB 843 would amend the Penal Code definition of barratry and make certain aggravated barratry offenses third-degree felonies (maximum penalty \$5,000 fine and 10 years in prison). The bill also would amend the Government Code to impose certain requirements on contingent fee contracts for legal services.

The bill would revise the barratry statute to specify that the intent to obtain a benefit refers to economic benefit. Such intent would be presumed if the accused had accepted employment or a fee or agreed to accept any economic benefit. It would add as an impermissible act the procurement of another to solicit business for another.

The bill would create a list of aggravating circumstances which, when coupled with two or more convictions for solicitation under these provisions, would constitute a third-degree felony: solicitation in a hospital, funeral parlor, cemetery, or at the scene of an accident; solicitation by using a government employee or an employee of a hospital or funeral parlor; and solicitation while impersonating a clergyman, public employee or emergency assistance worker or volunteer. Final conviction of felony

barratry would constitute a serious crime for all purposes, including disbarment.

CSSB 843 would add several new Penal Code definitions that would apply in the additions to the barratry statute, including a definition of "solicitation." It would mean a communication about a lawsuit or a claim, made in person or by telephone, with a potential plaintiff, defendant, or a member of their families, when neither the potential plaintiff, defendant, nor anyone on either's behalf sought legal advice. The term would not include communications made by a person who is a family member of the potential plaintiff or defendant or by an attorney who has a prior attorney-client relationship with the potential client. The term also would not include speaking to a "qualified non-profit organization" to educate laymen to recognize legal problems, intelligently select legal counsel, or use legal services.

The bill would require contingent-fee contracts to be in writing and be signed by both attorney and client. Contingent-fee contracts would be voidable if procured as a result of conduct that violates laws or Bar Disciplinary Rules.

CSSB 843 would apply only to offenses committed on or after its effective date, Sept. 1, 1989.

NOTES:

HB 1669 by Wolens and A. Smith contains substantially the same provisions as SB 843, except that its proposed penalties are higher.

SB 843 as passed by the Senate included a section that would have required a district court to enter an order suspending from the practice of law an attorney convicted of misdemeanor barratry and disbaring an attorney on proof of three or more final convictions of misdemeanor barratry. The substitute omitted this section. The substitute also reorganized the format of the original bill, included a detailed definition of "solicitation," and reduced the penalty for a first-time conviction under aggravating circumstances.